

# Immigration and State Issues

An Overview

by House Legislative Services

Louisiana House of Representatives

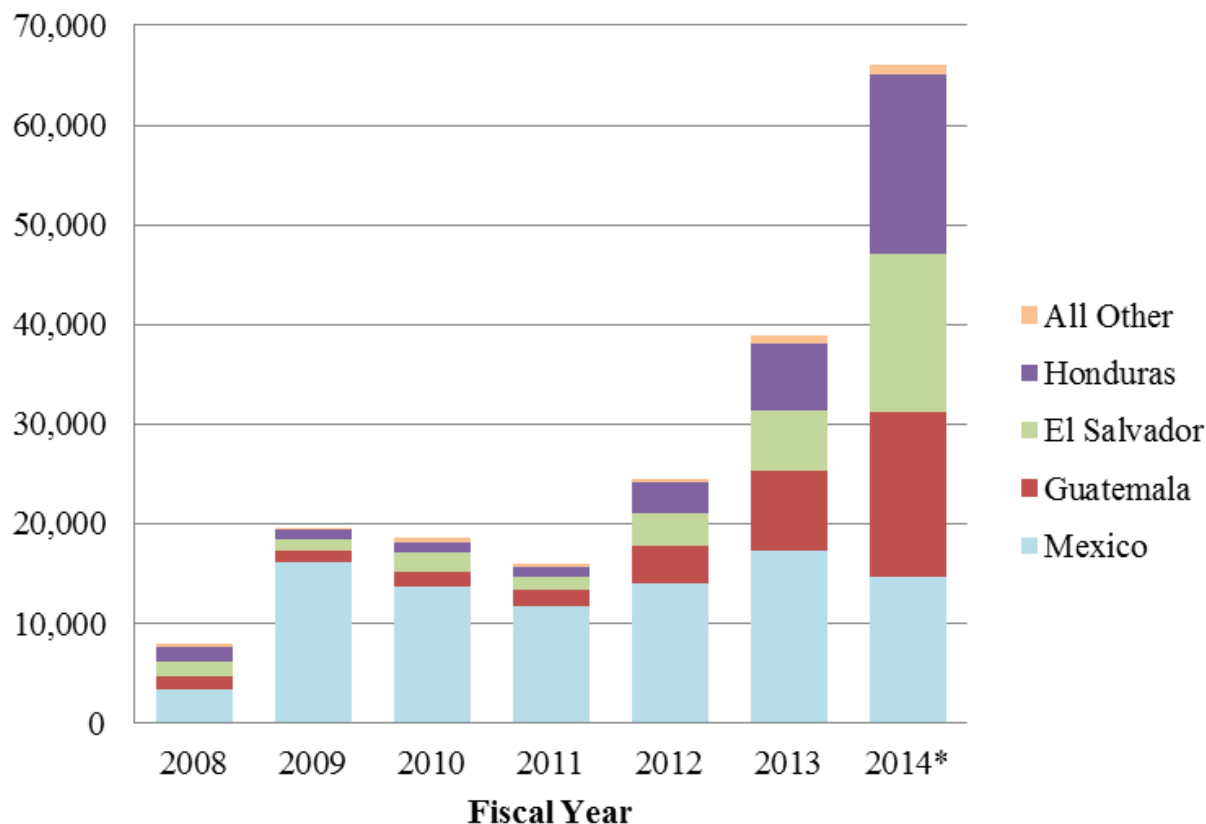
October 16, 2014

# Unaccompanied Alien Children(UAC)

## Who are They?

- Children who lack lawful immigration status in the United States
- Who are under the age of 18
- Who are without a parent or legal guardian in the United States
- 24% are under the age of 14
- 48% report they are fleeing from drug cartels or gangs

## Where are they from?



Source: U.S. Congressional Research Service

**DHS: CBP BORDER PATROL**  
Apprehends Unaccompanied Alien Children (UAC)

**DHS: CBP BORDER PATROL\***

Screens contiguous country UAC within 48 hours for claims of persecution, trafficking and fear of trafficking as well as willingness to return home voluntarily. (2008 TVPRA)

Screens third country UAC for claims of persecution, trafficking and fear of trafficking. (Policy)

**DHS: CBP BORDER PATROL**

For Contiguous UAC, processes **voluntary returns**, available only to UAC from contiguous countries (Mexico & Canada). Voluntary returns must be processed within 48 hours of apprehension. (2008 TVPRA)

**DHS: USCIS**

Adjudicates Special Immigrant Juvenile applications no later than 180 days of receipt of application.\*\* (2008 TVPRA)

(The UAC is still transferred to ORR for placement.)

**DHS: ICE**

Transports non-contiguous country UAC to ORR within 72 hours. (2008 TVPRA)

Transports contiguous country UAC who are not voluntarily returned to ORR immediately. (2008 TVPRA)

**DHS: CBP BORDER PATROL**

Gives a Notice to Appear and places UAC in formal removal proceedings.

**HHS: ORR**

Assumes custody and placement for the UAC with either family or with a sponsor, in a shelter, foster home, or (in rare cases) a secure facility.

**DOJ: EOIR**

Hears and decides removal cases.

**DHS: ICE**

Effectuates removal.

**DHS: USCIS**

Adjudicates claims for asylum and processes trafficking and Special Immigrant Juvenile (SIJ) petitions.

If asylum, trafficking and SIJ denied

\* CBP officers at ports of entry (POEs) also encounter UAC, however, the majority of UAC are apprehended between POEs by the Border Patrol.

\*\* A UAC can file a SIJ petition at any point.



## UAC Processing Flow Chart (left) Acronyms Used (below)

CBP - Customs and Border Protection

DHS - Department of Homeland Security

DOJ - Department of Justice

EOIR - Executive Office for Immigration Review

HHS - Department of Health and Human Services

ICE - Immigration and Customs Enforcement

ORR - Office of Refugee Resettlement

SIJ - Special Immigrant Visa

TVPRA 2008 - Trafficking Victims Protection Reauthorization Act

UAC - Unaccompanied Alien Children

USCIS - U.S. Citizenship and Immigration Services

**Prepared by: U.S. CONGRESSIONAL RESEARCH SERVICE**

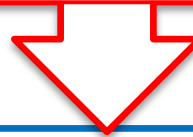
# Screening and Custody of UACs

When a UAC is apprehended, Department of Homeland Security must:

Determine the child's name, age, and country of origin

Collect fingerprints and run a criminal background check

Determine the child's unaccompanied status



UAC's from contiguous country can opt to "voluntarily" return; those from non-contiguous countries are sent to Office of Refugee Resettlement

2004, 78% of UACs voluntarily returned; 6,000 in ORR custody

Today, over 60,000 UACs are in ORR custody

UACs are given notice to appear and placed in formal removal process



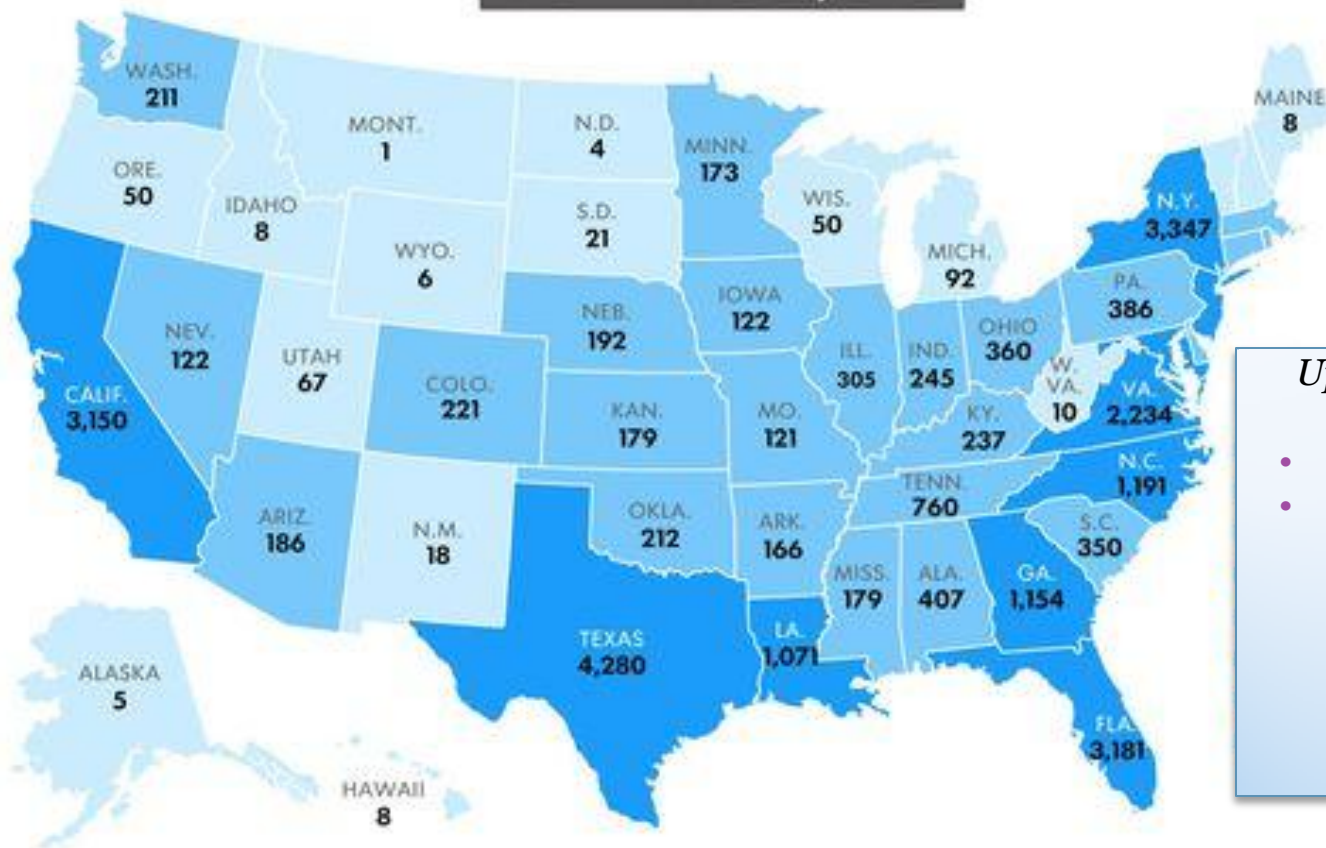
Office of Refugee Resettlement assumes custody of the child for placement with a family member, sponsor, in a shelter or foster home, or rarely in a secure facility

In 2014, 85% of UACs were placed with a relative or non-relative sponsor

40% of the time, that relative is a parent

# UACs Released to Sponsors

**TOTAL: 30,340**



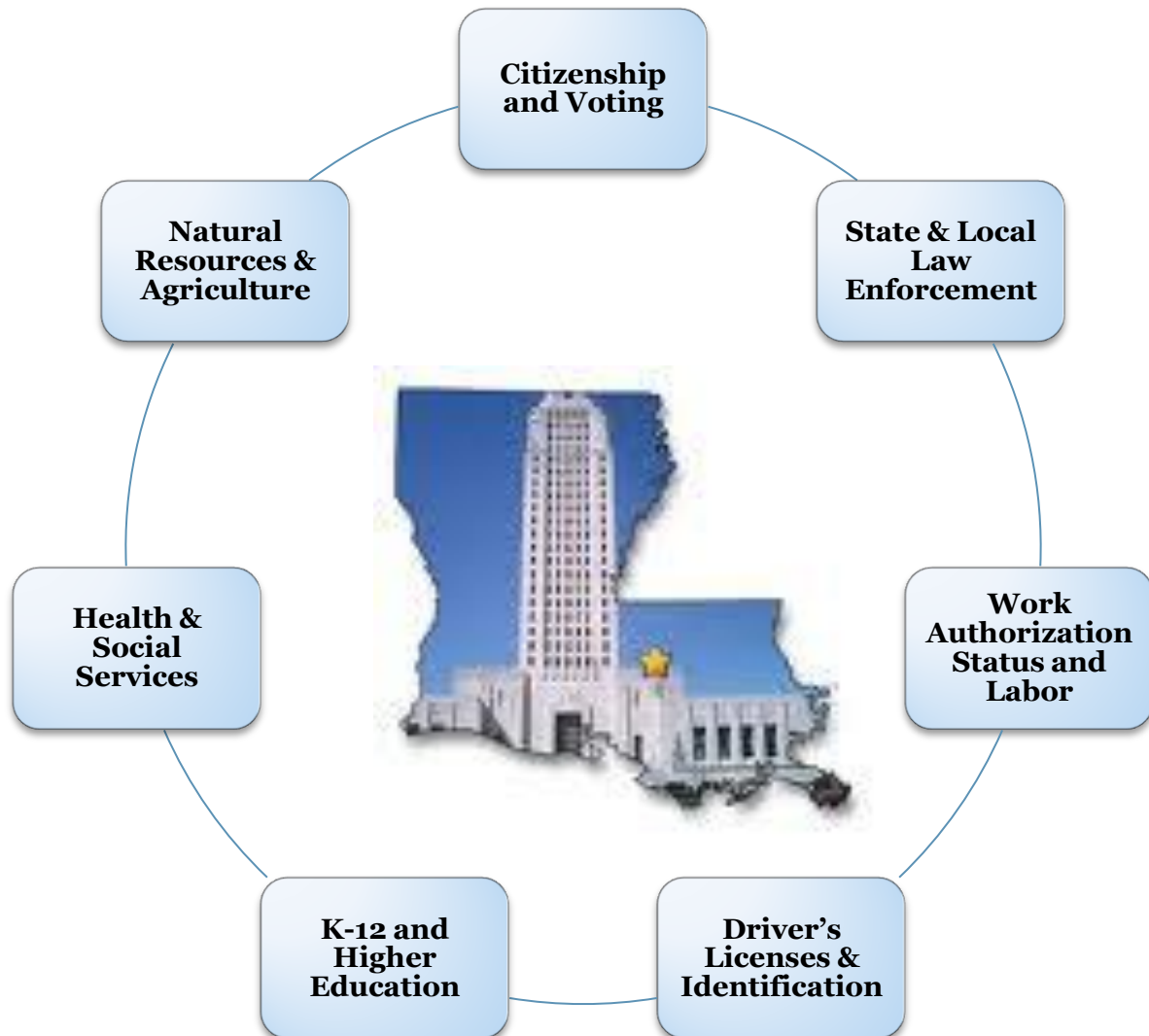
*Updated: Jan. 1–Aug 31, 2014*

- United States - 43,419
- In Louisiana - 1,414
  - East Baton Rouge 191
  - Jefferson Parish 575
  - Lafayette Parish 54
  - Orleans Parish 256
  - St. Tammany 58
  - Not assigned 280

Source: USA Today, Jan. 1-July 7, 2014

Source: Office of Refugee Resettlement

# Affected areas of Government



# Legal Conflict Between Federal Laws & State Action



## Federal Laws

- Supremacy Clause
  - Article Six, Clause 2
  - “Supreme law of the land”
  - *Arizona v. United States*



## State Laws

- Tenth Amendment
  - State Sovereignty
  - Powers not delegated to the U.S. by the Constitution are reserved to the States



# *Arizona v. United States*

132 S.Ct. 2492, 567 U.S. \_\_\_\_ (2012)

1. Created the crime of being unlawfully present in the U.S.
2. Created crime of working or seeking work while not authorized.
3. Authorized warrantless arrests of aliens believed to be removable from the U.S.

U.S. Supreme Court declared these provisions to be unconstitutional because the Supremacy Clause gives Congress the power to preempt state law, and the Federal Government's broad, undoubted power over immigration and alien status rests, in part, on its constitutional power to “establish an uniform Rule of Naturalization,” and on its inherent sovereign power to control and conduct foreign relations.

4. Required state & local officials to verify citizenship or alien status of any person stopped, arrested, or detained.

U.S. Supreme Court held that if the statute was interpreted to only require a status check during the course of an authorized, lawful detention or after release, the provisions would likely survive preemption. However, detaining an individual solely to verify immigration status would raise constitutional concerns.



# Responses of States



NCSL reports that in 2013, 45 states enacted 184 laws and 253 resolutions.

In 2014, 41 states enacted 132 laws and 84 resolutions, a 64% increase over 2012.

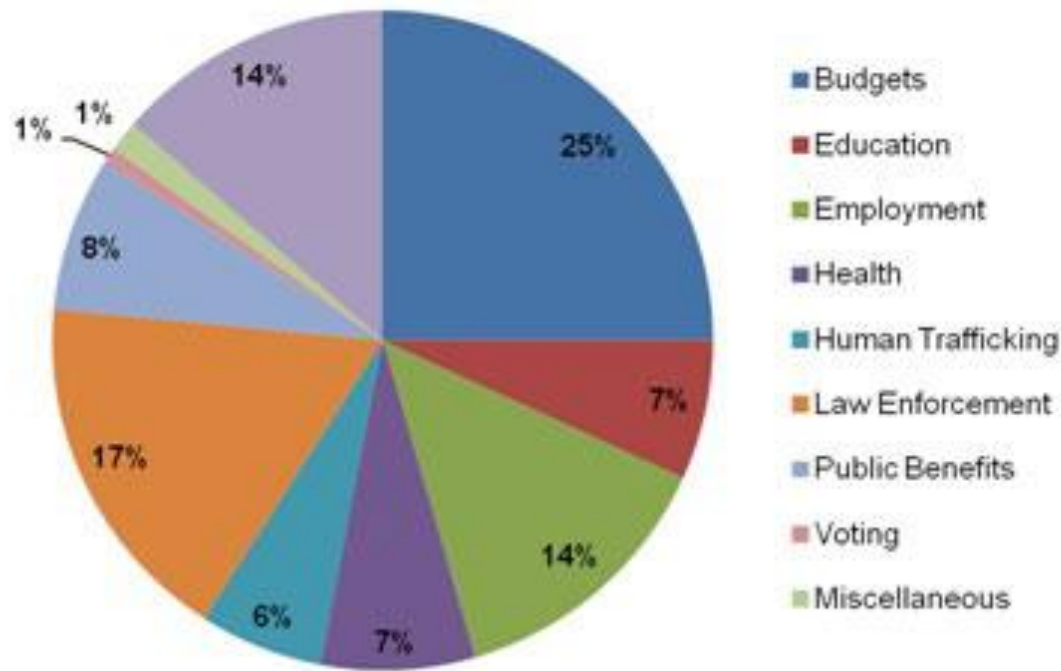
While total number of legislative enactments in 2014 appear to be trending down, four states were not in session, including Texas.

# Snapshot of State Activity

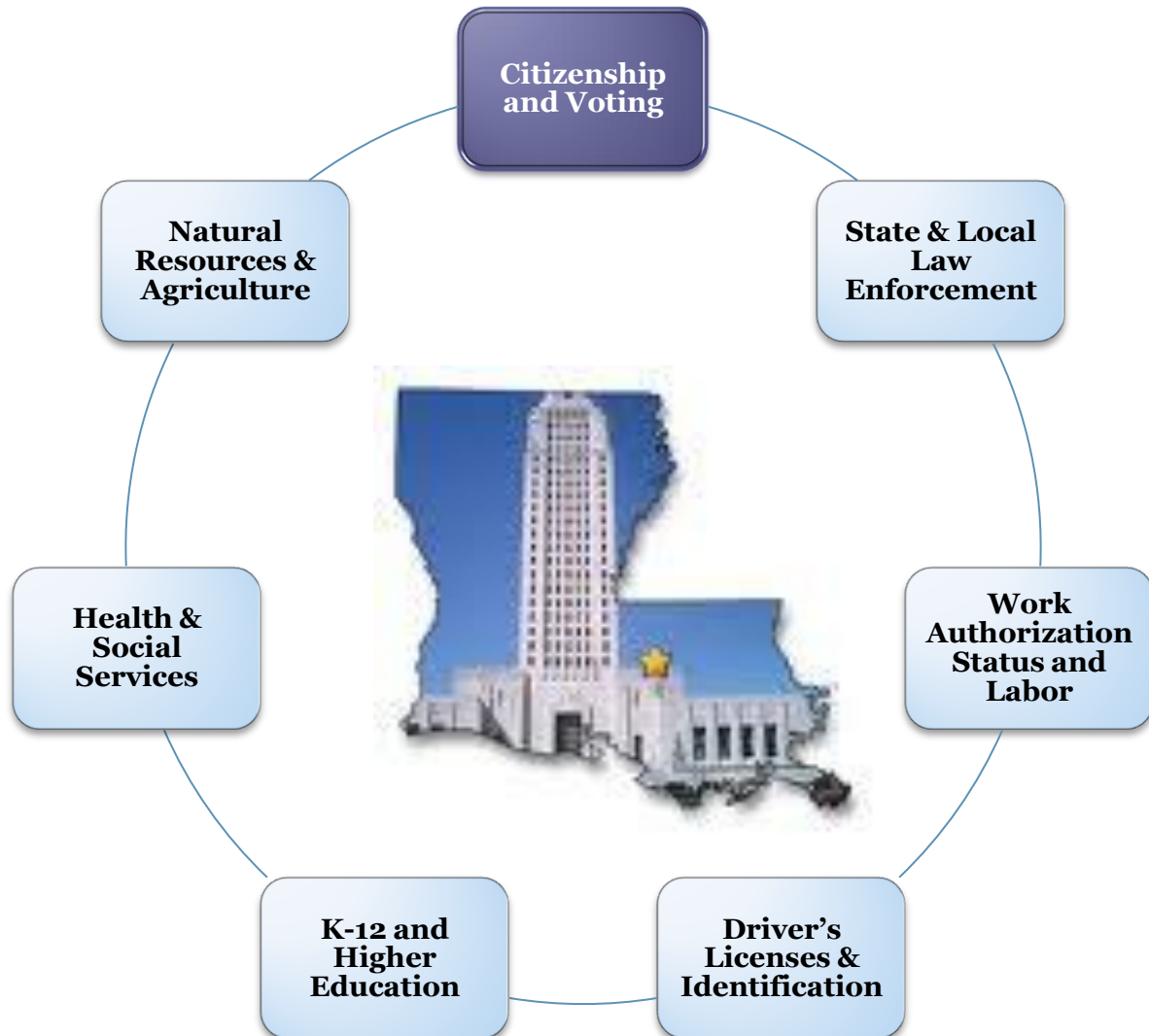


# Subject Matter of State Activity throughout U.S.

**Enacted Immigration-Related Laws by Subject  
January-June 2014**



# Affected Areas of Government



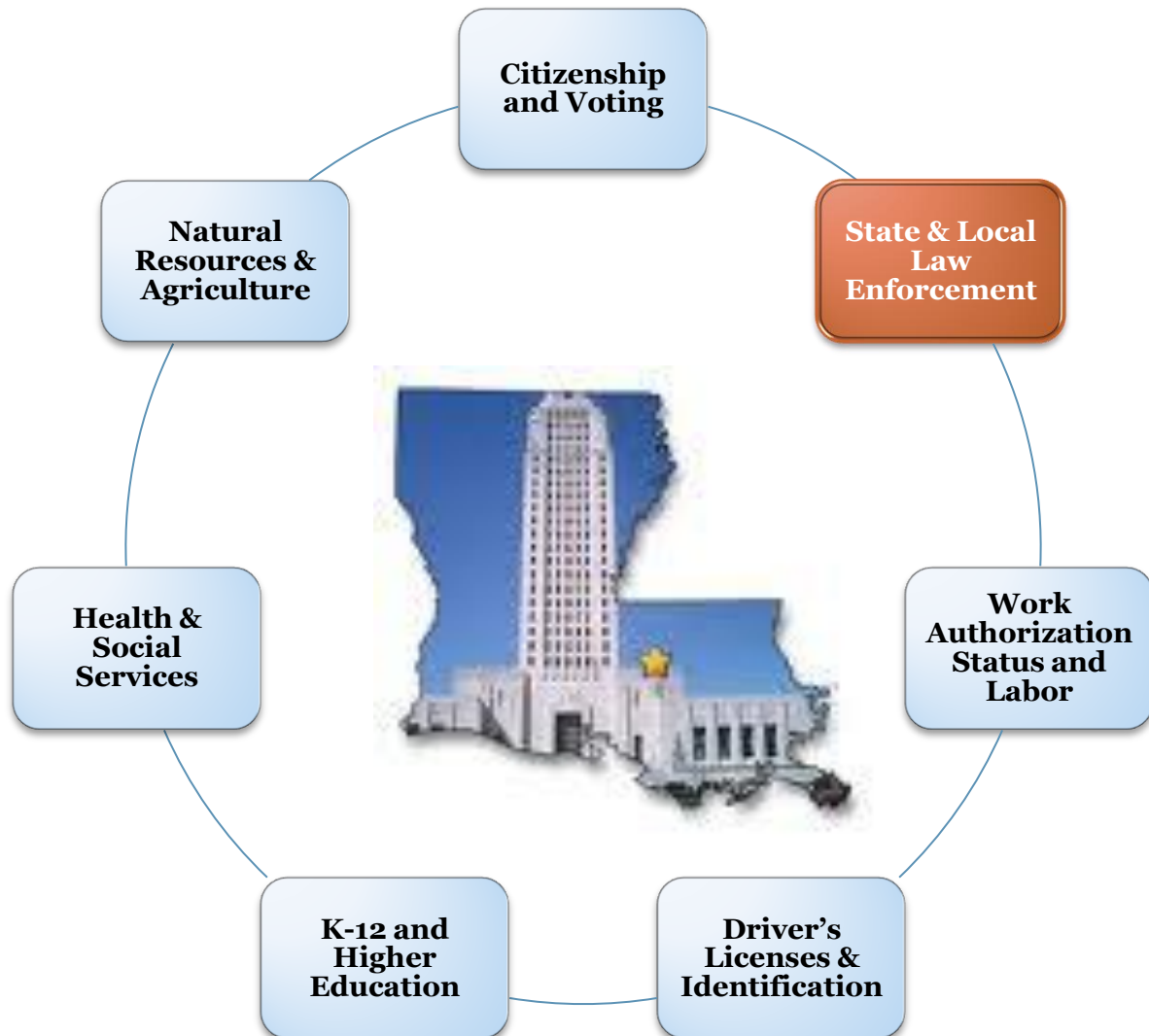
# Citizenship & Voting



## Louisiana State Voting Laws

- Citizenship is a requirement for voter registration.
- A person who applies to register must attest that he is a U.S. citizen.
- An applicant of foreign birth must prove citizenship by presenting naturalization documentation to the registrar of voters.
  - U.S. Passport
  - Certificate of naturalization
  - Certificate of citizenship
  - Certificate of repatriation

# Affected Areas of Government



# State & Local Law Enforcement

## Louisiana's Attempt to Enact Laws Requiring Proof of Lawful Presence

- After the terrorist attacks of September 11th, 2001, the Louisiana Legislature enacted R.S. 14:100.13 which prohibited the operation of a motor vehicle by an "alien student" or "nonresident alien" who does not possess "documentation demonstrating lawful presence in the United States."
- In 2012, Alexis Sarrabea was picked up in Lafayette for violation of R.S. 14:100.13. In 2013, the La. S.Ct. held that *in light of Arizona v. United States*, this law operates in the field of alien registration, is preempted by federal law pursuant to the Supremacy Clause, and is therefore, unconstitutional, (*State v. Sarrabea*).
- "Whereas, previously it may have been a closer question whether La. R.S. 14:100.13 is preempted..., *after Arizona*, it is clear that the federal government has occupied the field of alien immigration registration and that, as a result, even complementary legislation by the states operating in that field is pre-empted."

# State & Local Law Enforcement: INA Trumps

## Immigration and Nationality Act (INA) of 1952

- The INA identifies and defines the role of state and local officers who assist federal officers in the identification, apprehension, detention, and removal of aliens, including:
  - Written agreements with the U.S. Dept. of Homeland Security (DHS)
  - Formal cooperation with DHS
  - Informal cooperation with DHS



# State & Local Law Enforcement: Communication



Congress has made clear that no formal agreement or special training needs to be in place for state officers to "communicate with the [Federal Government] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States."

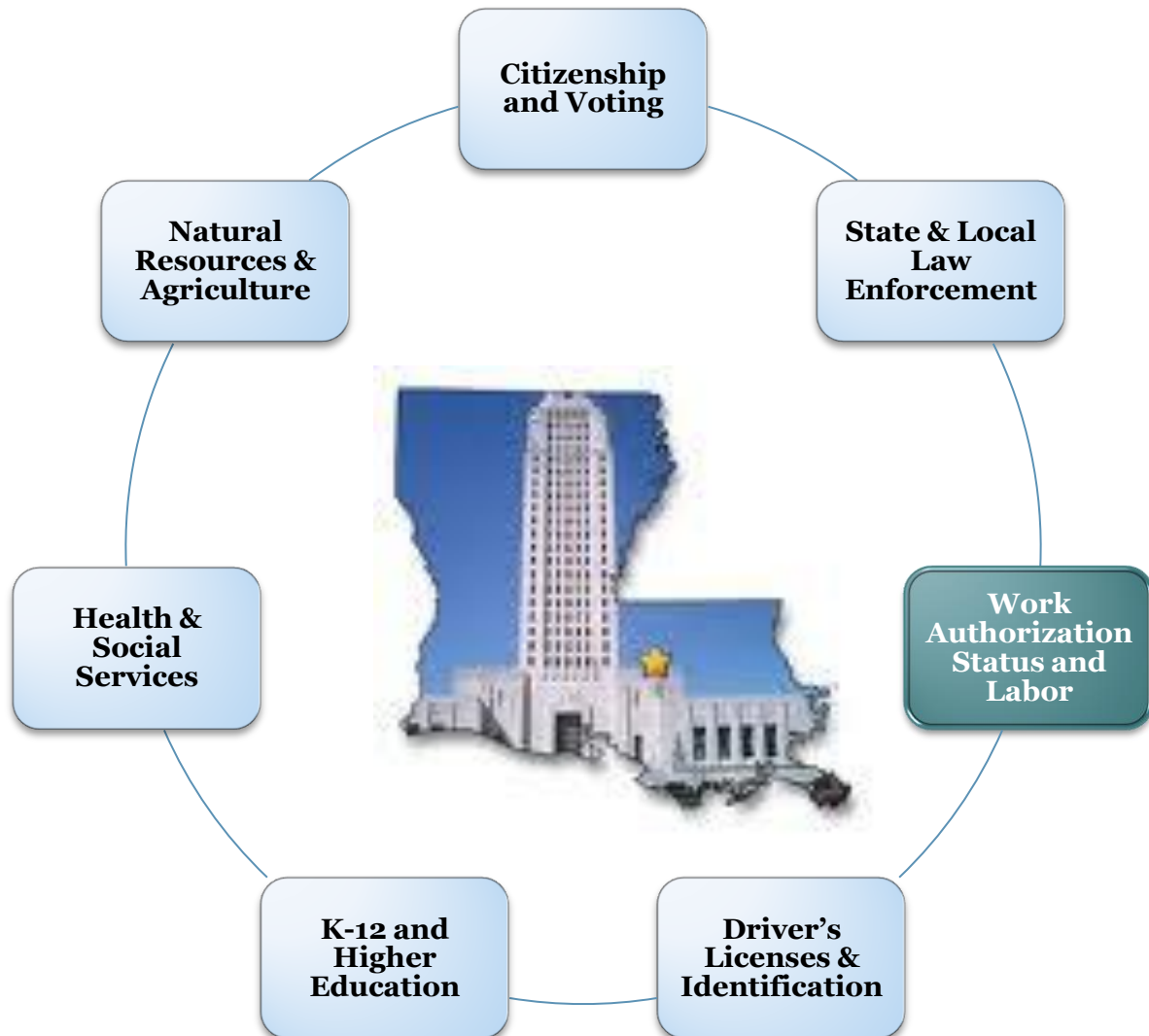


Congress has obligated Immigration and Customs Enforcement (ICE), an agency within DHS, to respond to any request made by state officials for verification of a person's citizenship or immigration status.



ICE's Law Enforcement Support Center operates "24 hours a day, seven days a week, 365 days a year" and provides, among other things, "immigration status, identity information and real-time assistance to local, state and federal law enforcement agencies."

# Affected Areas of Government



# Work Authorization Status & Labor

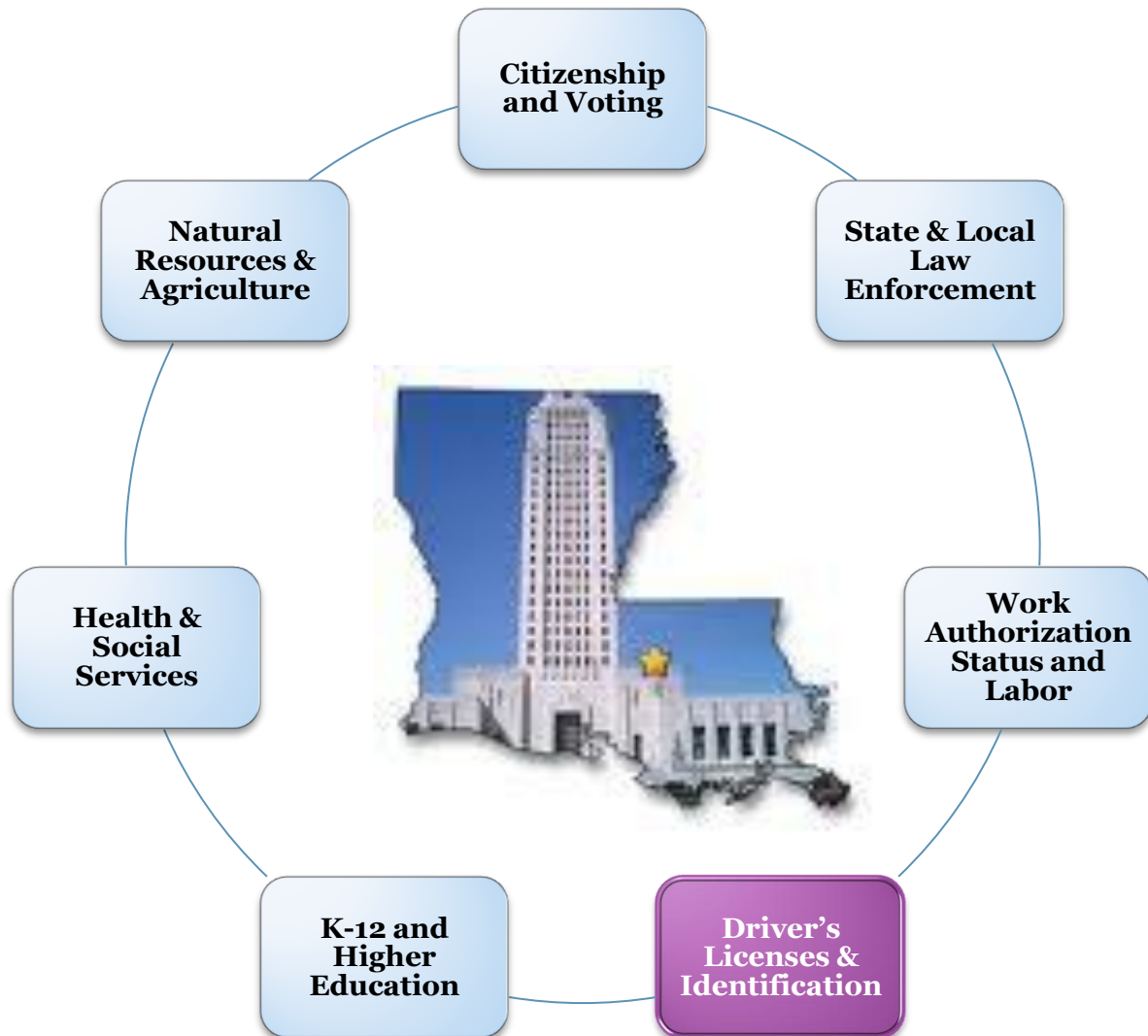
## Immigration Reform & Control Act of 1986

- Enacted in 1986, the Immigration Reform & Control Act requires employers to attest to employees' immigration status and makes it illegal to knowingly hire or recruit persons unauthorized to work in U.S.
- Immigrants are legally admitted into U.S. based on employers' demand for skills either on a 'green card' or temporary worker visa.
- The Act provides an exception to the requirement of verification of work authorization status for certain seasonal agricultural workers.

## Louisiana State Law

- Mirrors federal law in that Louisiana law requires employers to verify the work authorization status of all employees except those employed in the fields of agriculture, forestry, horticulture, livestock, dairy, poultry, animal husbandry, and horses.
- Workers' compensation issues are problematic.

# Affected Areas of Government



# Driver's License & Identification

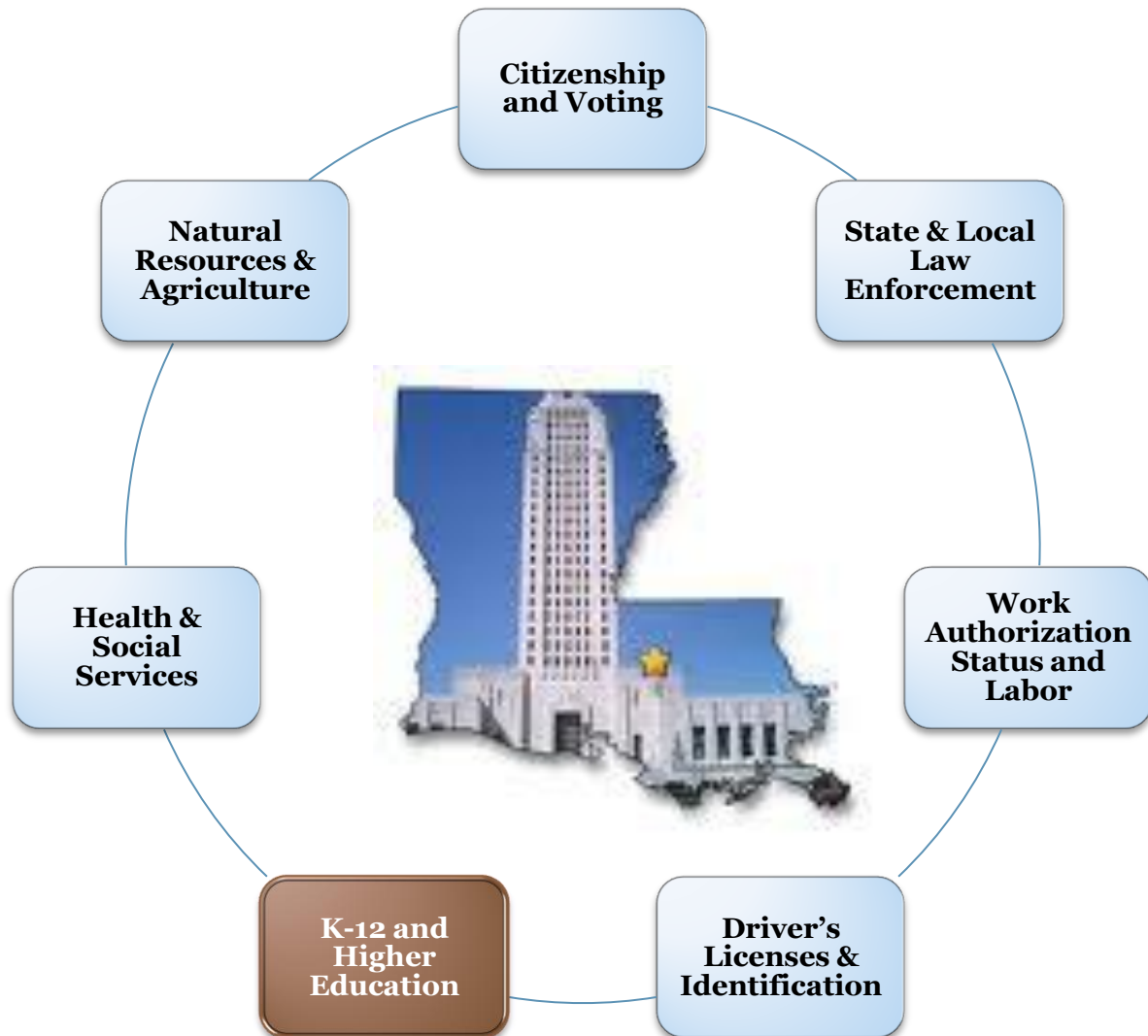
## The REAL ID Act of 2005

- Effort by states and federal government to improve reliability and accuracy of state-issued identification documents, intended to inhibit terrorists' activity.
- REAL ID requires certain information be contained on the identification card and further requires presentation and verification of certain documentation prior to issuance.
- Authorizes temporary driver's license or ID cards for certain non-U.S. residents upon proof of various statuses.

## Louisiana State Law

- State law presently requires applicant to provide one primary document and two secondary documents, two primary documents, or prior issued Louisiana driver's license or ID card.
- HB 907 of the 2014 Session would have provided for the issuance of REAL ID compliant driver's license and ID cards; vetoed

# Affected areas of Government



# K-12 Education

## Federal Law

States are prohibited from withholding funds and local school districts cannot deny enrollment to any child regardless of the child's documentation status, homelessness, inability to show proof of residency, or inability to speak English.

States have an obligation to provide equal educational opportunities to all children residing in their districts.

Both the Civil Rights Act and No Child Left Behind provide requirements for the equitable education of students who are not native English speakers regardless of their documentation status.

The 1982 U.S. S.Ct. case of Plyler v. Doe ruled unconstitutional a Texas law that withheld state funds from local school districts for the education of children who were not “legally admitted” into the U.S. and which further authorized local school districts to deny enrollment to these children.

The McKinney-Vento Homeless Assistance Act of 1987 provides that homeless children have the right to enroll in school even if their families cannot show proof of residency (and specifically includes children of migratory agricultural workers in the definition of “homeless children and youth” for purposes of the Act).

In 2014, the U.S. Dept of Justice and Dept of Education issued an updated guidance document to all public school districts “reminding them of their obligation under federal law to provide equal educational opportunities to all children residing in their districts”.

# K-12 Education

## Louisiana State Law

Regardless of legal status, a child who is physically present in Louisiana is not only entitled to attend but is required to attend K-12 school .

The state's compulsory attendance law does not distinguish between documented and undocumented parents or children.

State law prohibits a school board from denying a student admission if he resides within the geographic boundaries of the school system.

State law requires all children to present a copy of their birth certificate. However, a principal and the local superintendent have latitude to accept whatever positive proof of age, race, and parentage is available.

State law prohibits public school governing authorities from denying enrollment in school to any child solely because the child does not have a permanent address.



# Higher Education

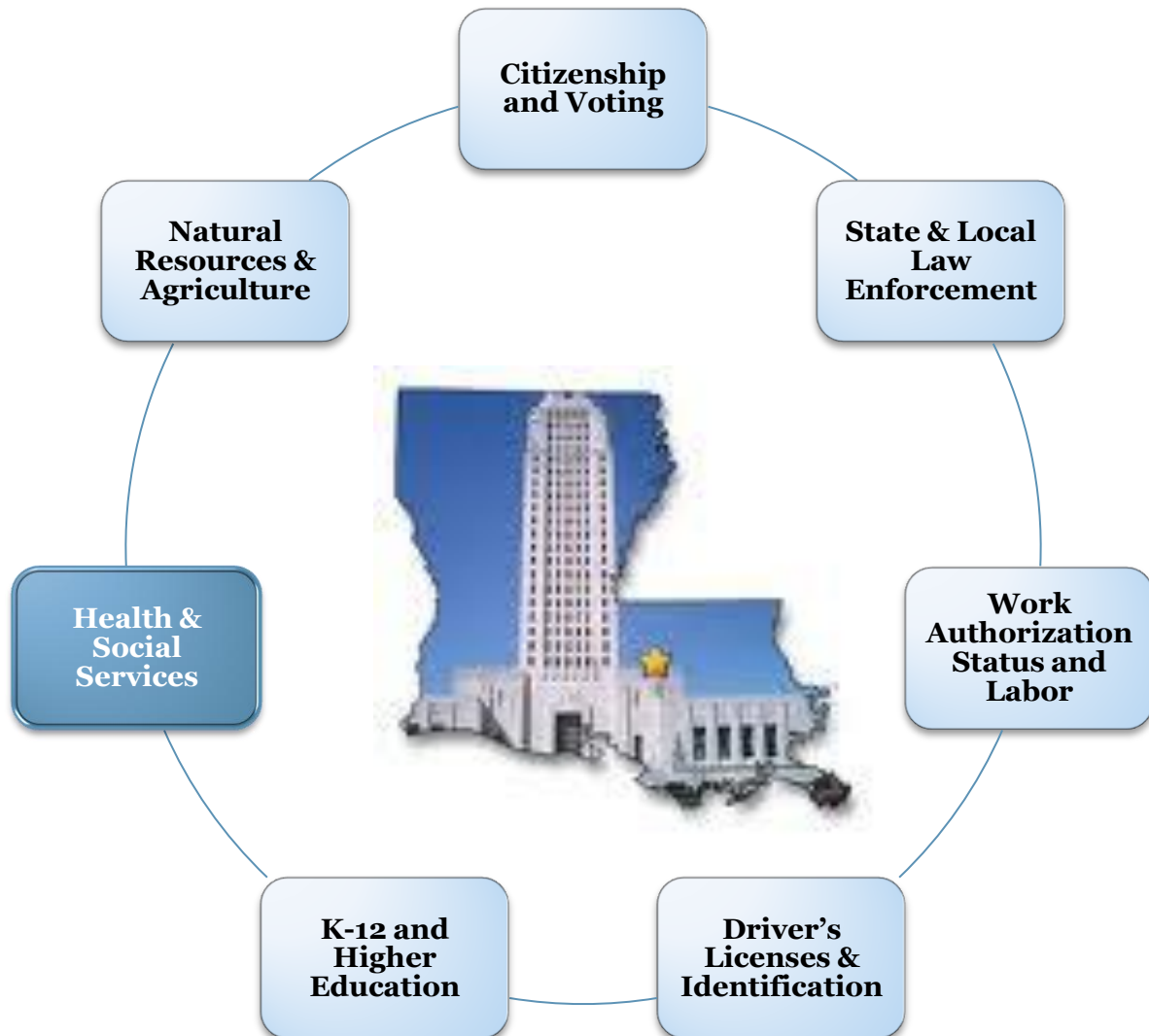
## Federal Law

- The 1965 Higher Education Act requires that applicants for federal financial aid be legal U.S. residents.
- The 1996 Illegal Immigration Reform and Immigrant Responsibility Act provides that a state cannot grant postsecondary education benefits to an “alien” based on his residency in the state unless any U.S. citizen could receive the same benefit.

## Louisiana State Law

- Under TOPS, a student is required to be a U.S. citizen or a permanent resident as defined by U.S. Citizenship and Immigration Services.

# Affected Areas of Government



# Health & Social Services

## Federal Law

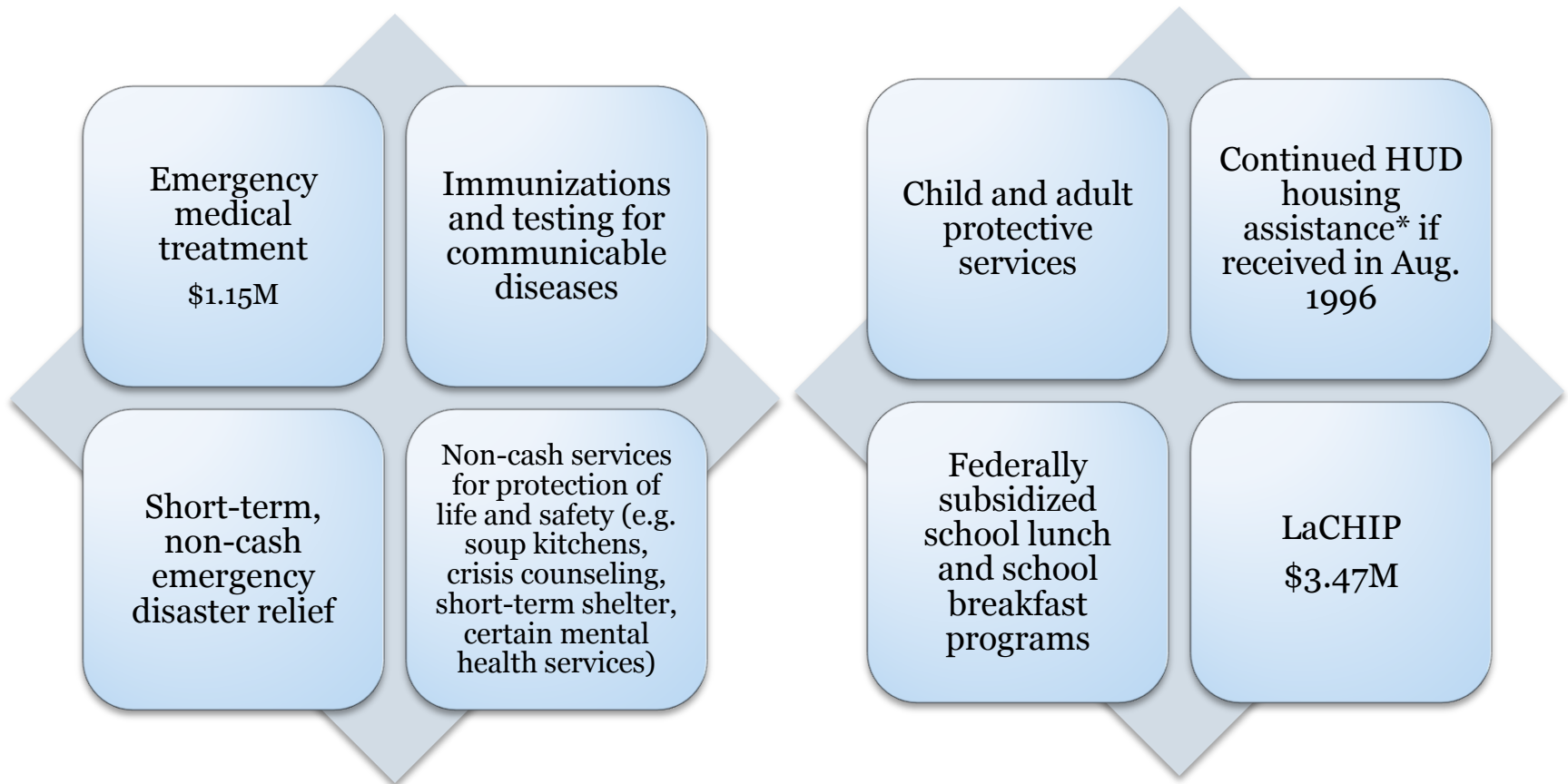
- Under federal law, persons who are illegally present in the U.S. are categorically *ineligible* for the nation's major public assistance programs, including:
  - SNAP ("food stamps").
  - TANF cash assistance ("welfare").
  - General Medicaid coverage.
  - Housing assistance.
- While certain programs allow for varying degrees of flexibility by states in program *implementation*, strict adherence to federally provided requirements, such as eligibility requirements, is a condition of federal funding.

## Louisiana State Law

- Federal law allows and Louisiana provides Medicaid covered health services to persons who are illegally present in the U.S. in two areas:
  - Coverage under LaCHIP for prenatal care and delivery services for pregnant women and their unborn children.
  - Emergency medical care.

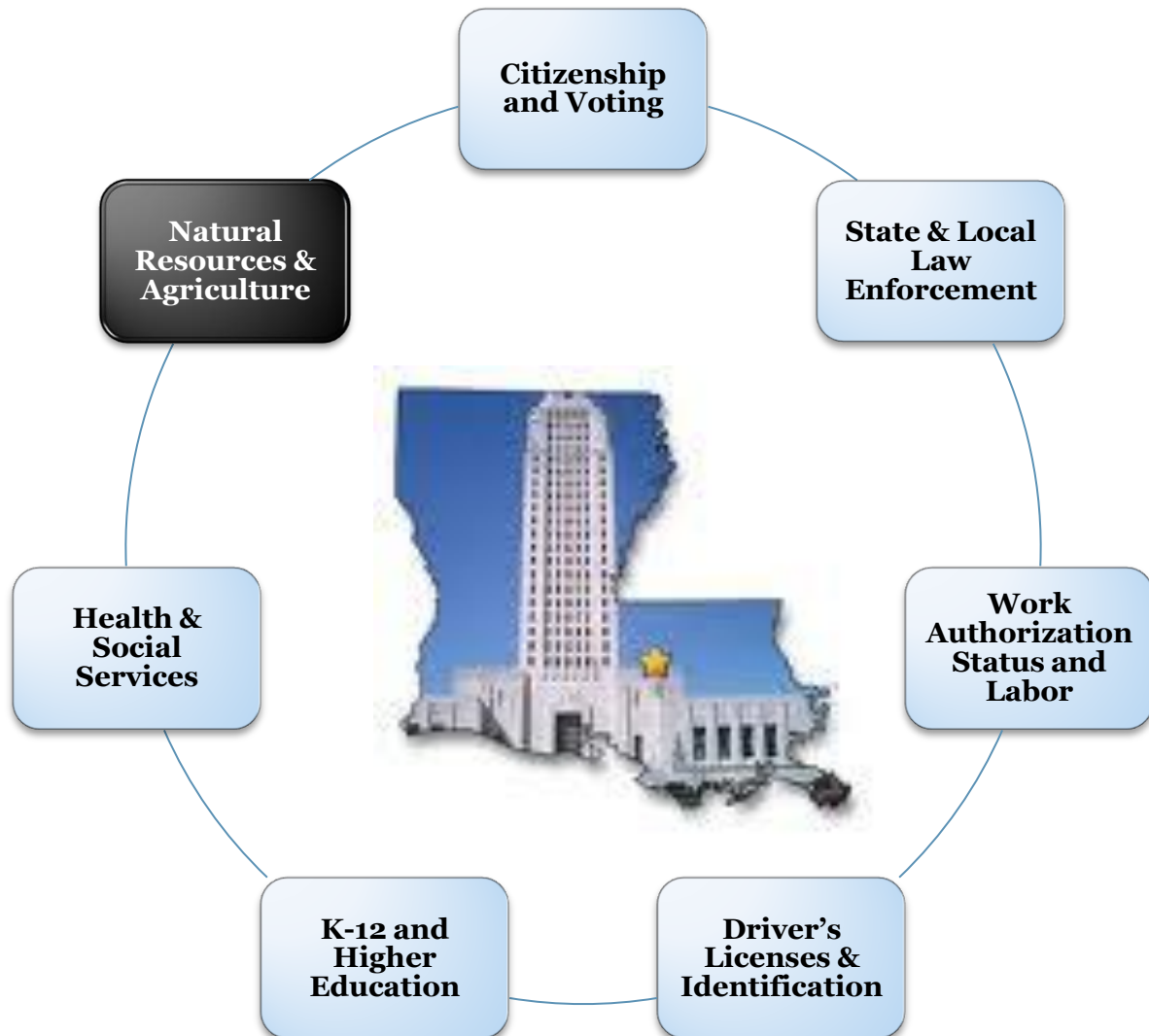
# Health & Social Services

## Undocumented Immigrants are Eligible for the Following:



\* HUD housing assistance includes public housing, Section 8 vouchers, and other rental assistance.

# Affected Areas of Government



# Natural Resources and Agriculture

## Federal Law

- Immigration issues in the agricultural, fishing, and forestry industries center around temporary worker visa status.
- The H-2A and H-2B Visa – a seasonal visa for temporary agricultural and non-agricultural workers wherein the employer must demonstrate to the U.S. Dept. of Labor there are not enough U.S. workers to do the temporary work and employment through the visa will not adversely affect U.S. workers.

## Louisiana State Law

- Other than Labor laws, there are no other specific state laws relative to immigrants as it relates to natural resources and agriculture.
- However, there is a commercial fishing license for alien individual (a person who is neither a U.S. Citizen nor a resident alien) which is two times the cost of a similar nonresident license.

# HLS Points of Contact

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